HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 83/06 (S/S)

Rashid Hussain

Vs.

State of Uttarakhand and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 20.02.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 83 (SS) OF 2006

1. Rashid Hussain, S/o Abid Hussain,
2. Smt. Farkhanda Parveen, W/o Rashid Hussain,
3. Munabar Ali, S/o Mohd. Usman,
4. Mohd. Saleem S/o Imamudin,
5. Nasreen Bano, D/o Shri Jiaul Islam,
6. Mohd. Javed Ashraf, S/o Mohd. Suhail Ashraf.
7. Mohd. Nadeem Ashraf, S/o Mohd. Suhail Ashraf,
8. Mohd. Farookh, S/o Mumtaz Hussain,
9. Samina Khatoon, D/o Shri Hafiz Ali Hussain,
10. Mohd. Islam, S/o Shri Intzaar Hussain,
11. Mohd. Aslam, S/o Shri Akhtar Hussain,
12. Ayub Alam, S/o Shri Rafique Ahmed,
13. Sahana Parveen, D/o Sayed Ahmed,
14. Mohd. Yunus, S/o Mahboob Hussain,
15. Surfraj Hussain, S/o Sadique Ahmed,
16. Shakil Ahmed, S/o Shri Mustaq Hussain,

All R/o C/o Rashid Hussain, Mohalla- Dilla Singh Near-Dr. Bangali, Jaspur, District Udham Singh Nagar.

.....Petitioners.

Versus

1. State of Uttaranchal, through Secretary Basic Education.
2. Director of Schools Education, Dehradun.
3. Additional District Education Officer/B.S.A. Udham Singh Nagar. .....Respondents.

20.02.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Dinesh Gahtori, learned counsel for the petitioner and learned Standing Counsel for the State.

By the present writ petition, the petitioner has prayed for a writ of Mandamus directing the respondents to call the petitioners for appointment on the post of Astt. Teacher Urdu without any delay against the advertisement dated 16.06.2002.

Brief facts giving rise to the present writ petition are that on 16.06.2002, the respondent no. 3 published an advertisement inviting applications for the post of Assistant Teacher of Urdu in basic schools from the candidates having B.T.C. Urdu Certificate.

The petitioners have submitted that on 16.06.2002 there were 26 vacant posts of Assistant Teacher Urdu in the District and at present, there are more than 46 posts are vacant. They have alleged that they have a certificate known as Moallim-E-Urdu, which was recognized as equivalent to B.T.C. Urdu by the State of U.P. vide G.O. dated 13.09.1994 and as such they have petitioners submitted their application forms before respondent no. 3, but the respondent no. 3 had not considered the candidature of the petitioners.

The petitioners have preferred a representation before respondent no. 3 on 03.07.2002 and the respondent no. 3 rejected the representation of the petitioners.

Being aggrieved by the action of the respondent no. 3, the petitioners have filed a writ petition No. 794 (S/B) of 2002, W.P. No. 1300 (S/B) of 2002, 1316 (S/B) of 2002.

This Hon'ble Court on 02.08.2003 allowed the writ petition no. 794(S/B) of 2002 and issued a writ of mandamus directing and commanding the respondents to recognize the certificate of Moallim-E-Urdu equivalent to B.T.C. Urdu for the recruitment against the appropriate post of those petitioners who have obtained certificate prior to 11.08.1997.

High Court of Uttaranchal in W.P. No. 794 (S/B) of 2002 has observed as under:-

"A bare perusal of the G.O. dated September 13, 1994 annexure-4 to the writ petition reveal that the State of U.P. has recognized the Moallim-E-Urdu certificate equivalent to BT.C. Urdu and in pursuance thereof incumbent who hold such certificates were to be given appointment against vacancies of B.T.C. discipline in Urdu language. No doubt, by G.O. dated 11.08.1998 certificates, which were recognized as equivalent to B.T.C., have been derecognized, except the certificates issued by institutions specified in this order. Jamia-E-Urdu do not find place among those institutions and, therefore, the certificate of Moallim-E-Urdu ceased to have recognition with effect from the date of the issuance of the said G.O. dated 11.08.1997. learned Standing Counsel did not controvert the argument advanced by the learned counsel for the petitioners that in view of the provisions of Section 86 of Uttar Pradesh Reorganisation Act, 2000 both the above G.O's of the State of U.P., issued prior to the creation of the State of Uttaranchal, continue to apply in the State of Uttaranchal. Therefore, if any8 person has obtained Moallim-E-Urdu certificate before 11.08.1997 will be entitled to the benefit of this certificate and G.O. dated 13.09.1994, (Annexure-4).

For the above reasons only those petitioners who have obtained Moallim-E-Urdu certificate before 11.08.1997 will be entitled to proper relief in this petition. Since the candidates who were selected pursuant to advertisement dated 16.06.2002 issued by respondent no. 2 have not been impleaded as the respondents in this petition and therefore, no relief in regard to the said advertisement is being granted to the petitioners.

The petition, therefore, succeed partly and a writ in the nature of mandamus directing and commanding the respondents to recognize the certificate of Moallim-E-Urdu

equivalent to B.T.C. (Urdu) for the recruitment against the appropriate posts of those petitioners who have obtained certificate prior to 11.08.1997. No order as to costs."

The petitioners have further made a grievance that till date they have not been called for interview in spite of the order passed by the Additional Secretary to the following effect:-

''विषयः– प्रदेश के प्राथमिक विद्यालयों में 217 सहायक अध्यापकों उर्दू के पदों पर नियुक्ति के सम्बन्ध में

महोदय,

उपर्युक्त विषयक आपके पत्रांक संख्या 23577/2000–01 के संदर्भ में मुझे यह कहने का निर्देश हुआ है कि प्राथमिक विद्यालयों में सहायक अध्यापक उर्दू के 217 (दो सौ सत्रह मात्र) रिक्त पदों पर नियुक्ति हेतु श्री राज्यपाल महोदय निम्नलिखित प्रतिबन्धों के अधीन सहर्ष स्वीकृति प्रदान करते हैं

(1) प्राथमिक विद्यालयों में सहायक अध्यापक के 217 रिक्त पदों पर नियमानुसार नियुक्ति की कार्यवाही प्रारम्भ की जाय।

(2) प्रश्नगत नियुक्ति प्रकिया पारदर्शिता अपनाते हुए विद्यमान नियमों/शासनादेशों के अनुसार नियमानुसार की जायेगी। प्रश्नगत प्रक्रिया में किसी भी प्रकार की शिथिलता नहीं बरती जायेगी।

(3) सहायक अध्यापक उर्दू के पदों पर नियुक्ति उ0प्र0 बेसिक शिक्षा अध्यापक छठवां संशोधन नियमावली 1994 तथा आठवां संशोधन नियमावली 1988 की व्यवस्थानुसार एवं जो भी प्रकिया नियमानुसार इस सम्बन्ध में प्रचलित हो, के अनुसार की जायेगी।

(4) उर्दू अध्यापकों के पदों पर नियुक्ति हेतु याचिका रू0 794/2002 में मा0 उच्च न्यायालय नैनीताल द्वारा पारित आदेशों के क्रम में भी प्रकरण में अग्रेत्तर कार्यवाही सुनिश्चित की जाय।''

The Director has already passed the order to the following effect:-

''उक्त प्रक्रिया अपनाते समय मा0 सर्वोच्च न्यायालय एवं मा0 उच्च न्यायालय में योजित विशेष अनुज्ञा याचिका एवं विशेष अपील व याचिका संख्या का उल्लेख कर स्पष्ट कर लिया जाय कि चयन प्रक्रिया उक्त आदेश के अनुसार ही सम्पादित की जा रही है,

जिससे अन्य नियुक्ति की प्रक्रिया विधिक रूप से बाधित न हो सके। यह व्यवस्था केवल याचिका सं0 794/2002, 1300/2002 एवक 1316/2002 के याचियों के लिए ही रहेगी।''

A supplementary affidavit has also been filed showing the certificates.

According to the grievance of the petitioners since the respondents have not called the petitioners for appointment as Urdu Teachers and as such the petitioners have prayed for a writ of mandamus against the respondent no. 3 for considering the candidature of the petitioners in the light of the judgment passed in W.P. No. 794 (SS) of 2002

Liberty is given to the petitioners to file a fresh representation stating their grievances within a period of ten days along with the certified copy of the order.

In view of the aforesaid government orders, the writ petition deserves to succeed. A writ of mandamus is issued to the respondent no. 3 to consider the candidature of the petitioner for the post of Assistant Teacher in Urdu in accordance with the Government Order dated 13th September, 1994 and judgment passed in Writ Petition No. 794/2002 within a period of six weeks from the date of presentation of the certified copy of the orders.

Writ petition is disposed of accordingly. No order as to costs.

(Rajesh Tandon, J.)

20.02.2006
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